In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1469

CAMELLIA GHASSEMI, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners are infant citizens of the United States. They were born in this country[1] while their parents, Iranian citizens, were here as nonimmigrants. On March 26, 1971, petitioners brought an action in the United States District Court for the Eastern District of New York in which they sought

[1] Petitioner Camellia Ghassemi was born in New York City on May 11, 1967; petitioner Cyrus Ghassemi was born in New York City on August 5, 1970.

a judgment declaring unconstitutional Section 201(b) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1151(b)),[2] and an order directing the Immigration and Naturalization Service to accept their application to have their parents classified as "immediate relatives" of United States citizens within the meaning of that section. Classification as "immediate relatives" would allow the parents to be admitted as immigrants without regard to the numerical limitations on admission of aliens established by Section 201(a) (8 U.S.C. 1151(a)). On March 29, 1971, the district court stayed the parents' deportation—which had been scheduled for the following day—pending disposition of petitioners' action. On June 16, 1971, the court, on the basis of a written opinion

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[2] Section 201, 8 U.S.C. 1151, provides in pertinent part:

(a) Exclusive of special immigrants defined in section 1101(a)(27) of this title, and of the immediate relatives of United States citizens specified in subsection (b) of this section, the number of aliens who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence * * * (i) shall not in any of the first three quarters of any fiscal year exceed a total of 45,000 and (ii) shall not in any fiscal year exceed a total of 170,000.

(b) The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age. The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations in this chapter.

dated May 25, 1971,[3] granted the government's motion for summary judgment and dismissed the action. On April 10, 1972, the court of appeals affirmed without opinion, but granted a stay of mandate under Rule 41(b), Fed. R. App. P.

Petitioners contend that, because it confers "immediate relative" status upon alien parents of adult —but not minor—United States citizens, Section 201(b) violates their right to equal protection and due process under the Fifth Amendment. As noted by the district court (Opinion, p. 4 n. 1) and as recognized by the petitioners (Pet. 8), this argument was rejected in *Faustino* v. *Immigration and Naturalization Service*, 432 F. 2d 429 (C.A. 2), certiorari denied, 401 U.S. 921, affirming 302 F. Supp. 212 (S.D. N.Y.), and *Perdido* v. *Immigration and Naturalization Service*, 420 F. 2d 1179 (C.A. 5). The decisions in these cases are correct.

Even if it be assumed that a rational justification is needed for a statutory classification respecting the admission of aliens, it is plain that the Section 201(b) distinction between minors and adults is reasonably designed to meet a legitimate and narrow objective. Section 201(b) reflects a Congressional intent to facilitate the reunification of families in circumstances where, for example, a citizen who has determined to make this country his permanent home wishes to have his aging parents join him here. The Congress recognized, however, that this purpose would not be served where, as here, alien parents seek special treatment

[3] A copy of the opinion is being lodged with the Clerk.

because of the fortuitous birth of their child during a temporary stay in this country as nonimmigrants. *Perdido*, *supra*, 420 F. 2d at 1181; accord, *Faustino*, *supra*, 432 F. 2d at 430.[4] The statute was drafted to serve this limited objective: it avoids the unintended conferral of special status upon the alien parents of an infant born in this country, and it seeks to insure that the citizen child is old enough to make a responsible decision as to his permanent home.

Kleindienst v. *Mandel*, No. 71-16 (argued April 18, 1972), to which petitioners refer, involves the unrelated question whether the exclusion of certain aliens under the Immigration and Nationality Act of 1952 is constitutionally impermissible on the ground that it deprives American citizens, who wish to hear such an alien in person, of freedom of speech under the First Amendment.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE, 1972.

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[4] For a brief discussion of the pertinent legislative history, see the district court's opinion in *Faustino*, 302 F. Supp. at 215-216.

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